

ID: CCA\_2009121815580803

Number: **201003016**

Release Date: 1/22/2010

Office:

UILC: 7425.01-00

---

**From:**

**Sent:** Friday, December 18, 2009 3:58:09 PM

**To:**

**Cc:**

**Subject:** RE: Receiver Sale in Foreclosure

No statutes define the term "judicial sale" for purposes of 28 U.S.C. § 2410 or I.R.C. § 7425(a). Neither does the legislative history of either statute indicate what Congress intended as a judicial sale for purposes of these two statutes. United States v. Capobianco, 836 F.2d 808, 815 (3<sup>rd</sup> Cir. 1988). The United States Supreme Court defined a judicial sale as a sale made "under the process of a court, having competent authority to order [such a sale]..., by an officer legally appointed and commissioned to sell." Williamson v. Berry, 49 U.S. 495 (1850); see also Lawson v. DeBolt, 78 Ind. 563 (1881) (quoting Williamson, 495 U.S. at 495).

As you stated, Indiana law authorizes a receiver appointed in a foreclosure proceeding to sell the foreclosed-upon property free and clear of all liens, subject to the court's approval. A sale conducted by such a receiver would be made under the process of a court because the court would have appointed the receiver as part of the foreclosure proceeding and will approve the sale. Therefore such a sale appears to meet the definition of a judicial sale as stated by the Supreme Court in Williamson.

More recent cases decided after the enactment of 28 U.S.C. § 2410 and I.R.C. § 7425 define judicial sales similarly. See e.g. Marks v. United States, 25 Cl. Ct. 10 310 (1991) ("A judicial sale is generally defined as a sale made under a judgment or order of a court of competent jurisdiction by an officer legally appointed and commissioned to sell who acts as a mere ministerial agent of the court which appoints him, such sale being subject to confirmation by the court, and becoming absolute only when so confirmed"). Because a foreclosure sale by a receiver in Indiana is subject to court approval, and the court in a foreclosure proceeding appoints the receiver, a sale by a receiver should constitute a judicial sale under this definition as well.

Please let me know if you have any questions or concerns.